

PATENT

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REPLY BRIEF

In response to the Examiner's Answer entered September 1, 2010, Appellant presents this Reply Brief. The same claim and argument headings that were used in the Argument section of the Appeal Brief are used below to respond to the "Response to Argument" section of the Examiner's Answer. Appellant respectfully requests that this appeal be considered by the Board of Patent Appeals and Interferences.

Claims 1, 16, 28, and 30:

In the opening brief (“Brief”), Appellant argued that Gorsuch discloses a system that uses only one transceiver or the other, and not both at any given time. As shown in FIG. 6 of Gorsuch, the CDMA pathway and the WLAN pathway are mutually exclusive. Thus, Gorsuch cannot teach or suggest the “bonding” recited in Appellant’s claims. *See* Brief at 19. Appellant also argued that although Himmel does teach parallel transmission via a wireless interface, this disclosure does not render claim 1 obvious in view of the other cited references, because Himmel merely teaches that wireless data of a particular format may be communicated in parallel, in much the same way that data of a particular format may be communicated in parallel on a circuit board (Himmel, however, uses a different channel frequency for each portion of the parallel transmission so that there is no interference between channels). *Id.* Appellant further argued that Himmel **does not teach or suggest** bonding disparate types of channels, much less the types of channels recited in the pending claims (cellular frequency channels and short-range radio channels).

In the Examiner’s Answer (“Answer”), the Examiner admits that the “combined teachings of Kobylinski and Scholefield and Gorsuch do not specifically disclose [features relating to transmission] in parallel.” *See* Examiner’s Answer at 5. Instead, the Examiner submits that “Himmel discloses in parallel,” and explains that it would be obvious to modify the other references to “allow for greater capacity.” *Id.* at 5-6.

Appellant submits that, even assuming *arguendo* it would be obvious to modify the other references in view of Himmel, such a modification would not result in a method within the scope of claim 1. Himmel discloses:

[T]he preferred wireless system bus is a wireless internal bus providing either serial or parallel communications. Where a wireless expansion bus is being used, the bus may be a PCI bus or other parallel communications bus, or a USB or other serial communications bus.

Himmel at col. 4, line 66-col. 5, line 3. Thus, while Himmel’s “internal bus” may provide “parallel communications,” such a bus is for a given parallel format/protocol (e.g., PCI). Accordingly, to the extent that the teachings of Himmel are relevant to the proposed combination of the other references, Himmel would at most suggest implementing the CDMA pathway using a parallel wireless interface and/or implementing the WLAN pathway using a parallel wireless

bus. **Because, as admitted by the Examiner, Gorsuch teaches using either the CDMA or WLAN at a given time, however, Himmel does not suggest a modification of Gorsuch’s CDMA or WLAN paradigm to transmit over CDMA and WLAN at the same time.** Stated another way, while Himmel might suggest transmitting data in parallel over whatever protocol is currently being used in Gorsuch, it in no way suggests transmitting data in parallel using two different protocols.

In the “Response” section of the Answer, the Examiner raises a number of issues. First, the Examiner submits that “in light of the specification, transmission in parallel does not require transmission at the same time or at a given point in time.” *See* Answer at 21. Appellant has several responses. The concept of parallel transmission is extremely well known; one of skill in the art would not understand Gorsuch’s Fig. 6 to teach parallel transmission via CDMA and WLAN. In fact, earlier in the Answer, the Examiner acknowledges that Gorsuch does not teach parallel transmission. *See id.* at 5. The Examiner’s positions on Gorsuch are therefore contradictory.

Second, while the Examiner appears to acknowledge that Himmel does not teach parallel transmission using different protocols, the Examiner suggests that Himmel’s use of different frequencies would motivate one of skill in the art to transmit in parallel using different protocols. *See* Answer at 22 (equating the use of different frequencies with the use of different protocols). Appellant disagrees, and submits that Himmel’s use of different frequencies to transmit in parallel via a given protocol (e.g., PCI) suggests merely that, and does not teach or suggest transmitting in parallel using two different protocols (e.g., PCI and a different protocol).

The Examiner apparently responds to this argument by stating the claims do not require two different protocols. *See* Answer at 22 (“the claims only require a bonded short range radio channel and a cellular frequency channel, which are clearly defined above in the primary reference, Gorsuch.”). Appellant respectfully submits that the Examiner is missing the point. In order to establish a *prima facie* case of obviousness with respect to claim 1, the Examiner must establish that a particular method was taught or suggest by a combination of references known in the art. *What is taught or suggested by a proposed combination of references, however, must be within the scope of claim 1.*

Here, the Examiner is proposing to modify a combination of Kobylinski, Scholefield, and Gorsuch based on Himmel. Gorsuch’s Fig. 6 (which the Examiner heavily relies upon) teaches

transmitting using either CDMA or WLAN depending on the state of switch 211b. As noted above, to the extent that Himmel discloses parallel transmission, it does so within the context of a single protocol (e.g., PCI) using different frequencies. Even assuming *arguendo* that it is appropriate to apply such techniques to Kobylinski/Schollefield/Gorsuch, such a modification would, at best, involve changing the configuration of Gorsuch such that whatever protocol is currently being transmitted would be performed using a parallel bus. Himmel does not teach or suggest eliminating switch 211b and, e.g., transmitting via transceivers 140 and 240 in Gorsuch's Fig. 6 at the same time. Thus, a method based on Kobylinski/Schollefield/Gorsuch/Himmel does not fall within the scope of claim 1, at least because those references do not teach or suggest "*transmitting data to the base station in parallel over the bonded short-range radio channel and the allocated cellular frequency channels.*" Accordingly, the Examiner's arguments regarding claim 1 not requiring different protocols are misplaced.

Finally, echoing other arguments discussed above, the Examiner argues that "bonding" in claim 1 can be met by the configuration of Fig. 6 of Gorsuch. The Examiner cites page 17, lines 15-18 in support of this position. Appellant submits that the Examiner has misread this portion of the specification, which goes on to state, later in the same paragraph, that "[i]f the signal reception is poor for both pathways, the router 190 can send some packets in parallel through **both** the primary and secondary communication channel (cellular and/or BluetoothTM or WLAN) to make sure some of the packets arrive at their destination" (emphasis added). Appellant submits that this paragraph does *not* support the Examiner's interpretation of "bonding." Notably, the Examiner's position ignores the passage at page 3, lines 8-11, which states: "*The method includes communicating on a short-range radio channel, wherein the short-range radio channel is Bluetooth or IEEE 802.11 (also known as Wireless Local Area Network or WLAN). The method can bond the short-range radio channel along with the several cellular frequency channels to increase bandwidth.*" The Examiner's reading of "bonding" does not square with this passage—if "bonding" included transmitting via short-range radio channel OR cellular frequency channel, there would not be an increase in bandwidth. This passage, and thus the meaning of "bonding" within the context of claim 1, must be understood to refer to transmitting on both the short-range radio channel and the cellular frequency channels at the same time.

For at least the reasons stated above, Appellant requests reversal of claim 1 and its dependent claims, as well as claims 16, 28, and 30 and their corresponding dependent claims.

Claim 2

In the Brief, Appellant argued that none of the references teach or suggest “transmitting includes the mobile device transmitting, at a given point in time, a first portion of data on the allocated cellular frequency channels and a second portion of the data on the short-range radio channel,” as recited in claim 2.

In the Answer, the Examiner agrees that Gorsuch teaches transmitting a first portion on a short range transceiver and when the short range is no longer available, transmitting on a long range transceiver.” *See Answer at page 24.* However, the Examiner further asserts “[i]n light of the specification, the given point in time claimed is a timeslot such as one of the timeslots shown in fig 1B of appellant’s drawings, where a timeslot is an interval of time from tx-ty.” *Id* at 24-25.

First, Appellant submits that “a given point in time” is not a “timeslot” or window of time. A given point in time is just that, a “point.” Thus, Appellant submits that because claim 2 recites “transmitting, at a given *point* in time, a first portion of data on the allocated cellular frequency channels and a second portion of the data on the short-range radio channel,” the claim refers to transmitting the first and second portions at the (same) point in time.

Second, in regard to the Examiner’s assertion in reference to FIG. 1B of the present specification, Appellant submits that the text accompanying this figure does not support the Examiner’s position. Figure. 1B shows one TDMA frame on the uplink and one TDMA frame on the downlink. *See Specification, page 8, lines 17-20.* Each frame includes eight time slots. *See id.* at page 9, lines 1-3. The specification discusses how the frequencies are broken up and bonded using both FDMA and TDMA techniques. *See id.* at page 9, lines 7-10 (“The mobile station in turn updates its transceiver with the frequency information, and the transceiver can listen for data in all frames associated with the 890.2 and 890.4 MHz channels. In this example, two frequency channels have been bonded together to increase transmission bandwidth.”). Thus, Appellant submits that the specification supports its reading of claim 2 (as well as claim 1).

Appellant therefore requests reversal of the rejection of claim 2.

Claim 29

Appellant continues to maintain that the rejection of claim 29 is in error for at least the reasons set forth in the Brief. *See* Brief at 24.

CONCLUSION

For at least the foregoing reasons, it is submitted that the Examiner's rejection of claims 1-4, 7, 15-19, 21, and 23-32 was erroneous, and reversal of the decision is respectfully requested.

Appellant believes that no fees are due. However, the Commissioner is authorized to charge any fees that may be due to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/6057-60300.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such extension.

Respectfully submitted,

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